

**A SUBSTITUTE ORDINANCE BY**  
**CITY UTILITIES COMMITTEE**

~~04-0-1206~~  
04-0-1206

**AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES CHAPTER 74, ARTICLE II "LAND DISTURBING ACTIVITIES" (SECS. 74-36 THROUGH 74-75) SO AS TO ACHIEVE CONSISTENCY WITH THE EROSION AND SEDIMENTATION ACT OF 1975, AS AMENDED, AS FOUND IN CHAPTER 7 OF TITLE 12 OF THE OFFICIAL CODE OF GEORGIA; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Erosion and Sedimentation Act of 1975, codified as O.C.G.A. § 12-7-1 et seq. provides for the establishment and implementation of a statewide comprehensive soil erosion and sedimentation control program to conserve and protect the land, water, air and other resources of this state; and

**WHEREAS**, House Bill 285 of the 2003 Session of the Georgia General Assembly, amended certain provisions of the Erosion and Sedimentation Act of 1975; and

**WHEREAS**, the City of Atlanta supports the goals of the erosion and sedimentation control program established by the State Environmental Protection Division ("E and S Program"); and

**WHEREAS**, the City is a local issuing authority under the E and S Program; and

**WHEREAS**, the City of Atlanta must comply with the requirements of the Erosion and Sedimentation Act of 1975, as amended and incorporate the said amendments into its Code of Ordinances.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** That Article II of Chapter 74 of the Code of Ordinance, comprised of Section 74-36 through Section 74-45 and referred to as the "City of Atlanta Soil and Erosion Control Ordinance," is hereby rescinded in its entirety.

**SECTION 2:** That the existing Article II shall remain in full force and effect until this Ordinance is adopted.

**SECTION 3:** That a new Article II of Chapter 74 of the Code of Ordinances, comprised of Section 74-36 through Section 74-47 entitled "City of Atlanta Soil and Erosion Control Ordinance," is hereby established and be adopted as follows:

**"ARTICLE II. SOIL EROSION AND SEDIMENTATION CONTROL**

**Sec. 74-36. Title, authority and findings.**

*Director* means the director of the environmental protection division of the department of natural resources.

*District* means the Fulton or DeKalb Soil and Water Conservation District.

*Disturbed Area* means the total area on which land disturbing activities are to take place.

*Division* means the environmental protection division of the department of natural resources.

*Drainage structure* means a device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for stormwater management, drainage control, or flood control purposes.

*Erosion* means the process by which land surface is worn away by the action of wind, water, ice or gravity.

*Erosion and sedimentation control plan* means a plan for the control of soil erosion and sedimentation resulting from a land disturbing activity. Also known as the "plan".

*Fill* means a portion of land surface to which soil or other solid material has been added; the depth above the original ground.

*Finished grade* means the final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

*Grading* means altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

*Ground elevation* means the original elevation of the ground surface prior to cutting or filling.

*Land-disturbing activity* means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in section 74-38(e).

*Larger Common Plan of Development or Sale* means a contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

*Local Issuing Authority* means the City of Atlanta acting through its Department of Watershed Management, which has been certified by the director of the environmental protection division of

*Sediment* means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.

*Sedimentation* means the process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

*Soil and water conservation district approved plan* means an erosion and sedimentation control plan approved in writing by the Fulton or DeKalb Soil and Water Conservation District.

*Stabilization* means the process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

*State General Permit* means the National Pollutant Discharge Elimination System general permit or permits for storm water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et. seq., and subsection (f) of Official Code of Georgia § 12-5-30.

*State waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

*Structural erosion and sedimentation control practices* means practices for the stabilization of erodible or sediment producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the publication Manual for Erosion and Sediment Control in Georgia.

*Trout streams* means all streams or portions of streams within the watershed as designated by the Game and Fish Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. §§ 12-5-20 et seq. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

*Vegetative erosion and sedimentation control measures* means measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or
- b. Temporary seeding, producing short-term vegetative cover; or

the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;

f. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in section 74-43(c)(15) and (16) of this article, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;

g. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

h. Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the city from regulating any such project which is not specifically exempted by subsections a., b., c., d., e., f., g., i., or j. of this section;

i. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the department of transportation, the Georgia Highway Authority, or the state tollway authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of department of transportation or state tollway authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1 except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the City, and the City shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a LDA permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

j. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the public service commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of

an agreement which allows the city to conduct such review and approval of the plan without referring the application and plan to the district.

(4) a. If an LDA permit applicant has had two or more violations of previous city issued permits, this article, section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the city may deny the LDA permit application.

b. The LDA permit applicant shall submit a performance bond by a bonding company licensed and registered in Georgia made payable to the city which shall ensure that all disturbed areas and/or affected areas, due to grading operations, will be stabilized through structural and/or vegetative measures to provide effective soil erosion and sediment control. The bond amount shall be \$3,000.00 per acre for areas of disturbance one and one-tenths acres and larger and \$3,000.00 minimum for sites under one and one-tenths acres having cut and/or fill amounts over 500 cubic yards. If the applicant does not comply with this article or with the conditions of the LDA permit after issuance, the city may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the city with respect to alleged LDA permit violations. The term of the bond shall extend through the proposed project until one year following its completion. Failure to renew the performance bond, should it expire prior to completion and acceptance of the work by the city, shall be considered grounds for suspending or revoking the LDA permit.

(c) LDA Permits.

(1) LDA Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the city of a completed application, providing variances and bonding are obtained, where necessary.

(2) No LDA permit shall be issued by the city unless the erosion and sedimentation control plan has been approved by the district and the city has affirmatively determined that the plan is in compliance with this article, any variances required by subsection 74-43(c)(13), (15) and (16) are obtained, bonding requirements, if necessary, as per subsection 74-39(b)(4)b are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the city are met. If the LDA permit is denied, the reason for denial shall be furnished to the applicant.

(3) If the tract is to be developed in phases, then a separate LDA permit shall be required for each phase.

(4) The LDA permit may be suspended, revoked, or modified by the city, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this article. A holder of an LDA -permit shall

(10) Maintenance statement - "Erosion and sedimentation control measures will be maintained at all times. If full implementation of the approved plan does not provide for effective erosion and sediment control, additional erosion and sediment control measures shall be implemented to control or treat the sediment source."

(c) Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control. After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements as developed by the Commission pursuant to O.C.G.A. 12-7-19. The certified plans shall contain:

- (1) Graphic scale and north point or arrow indicating magnetic north.
- (2) Vicinity maps showing location of project, existing streets and drainage paths within one mile of the project.
- (3) Boundary line survey.
- (4) Delineation of disturbed areas within project boundary.
- (5) Existing and planned contours, with an interval in accordance with the following:

TABLE INSET:

Map Scale	Contour Interval, ft.	Ground Slope
1 inch = 100 ft. or larger scale	0.5 or 1	Flat 0--2%
	1 or 2	Rolling 2--8%
	2, 5 or 10	Steep 8%

(6) Adjacent areas and features areas such as streams, lakes, residential areas, etc. which might be affected should be indicated on the plan.

(7) Proposed structures or additions to existing structures and paved areas.

(8) Delineate the state and city horizontal buffers adjacent to state waters required by subsections 74-43(c)(15) and 74-43(d), respectively, and the specified buffer width in MRPA areas.

(9) Delineate the specified horizontal buffer along designated trout streams (the Chattahoochee River within the city) required by subsection 74-43(c)(16).

(10) Location of erosion and sedimentation control measures and practices using coding symbols from the Manual for Erosion and Sediment Control in Georgia.

does not take necessary corrective action within 30 days after notification by the division, the division may revoke the certification of the City as an issuing authority.

**Sec. 74-42. Stop work and penalties.**

- (a) *Land-Disturbing Activity Stop-work orders; effect.* When a land-disturbing activity stop-work order is issued by the city, such stop-work order shall be a final order of the city, shall be effective immediately and shall apply to all land-disturbing activity on the site except for necessary corrective action or mitigation and shall be in effect until such corrective action or mitigation has occurred. Performing land-disturbing activities on a site while subject to a land-disturbing activity stop-work order shall be a violation of this Ordinance.
- (b) *Project wide Stop-work orders; effect.* When a project wide stop-work order is issued by the city, such stop-work order shall be a final order of the city, shall be effective immediately and shall apply to all activity on the site, including but not limited to land-disturbing activity, construction, architecture, landscape, electric, plumbing and any other work at the site, except for necessary corrective action or mitigation and shall be in effect until such corrective action or mitigation has occurred. Performing activities on a site while subject to a project wide stop-work order shall be a violation of this Ordinance.
- (c) *First violation of Article; when stop-work.* Except as otherwise provided in this section, for the first violation of the provisions of this article, the city shall issue a written warning to the violator. The violator shall have three days to correct the violation. If the violation is not corrected within three days, the city shall issue a land-disturbing activity stop-work order. If the violation is not corrected within three days from the issuance of the land-disturbing activity stop-work order, the city shall issue a project wide stop-work order.
- (d) *Additional violations of Article; when stop-work.* For a second and each subsequent violation of the provisions of this article, the city ~~shall~~ may issue an immediate land-disturbing activity stop work order. If the violation is not corrected within three days from the issuance of the land-disturbing activity stop-work order, the city ~~shall~~ may issue a project wide stop-work order.
- (e) *Stop-work orders not requiring warning.* A land-disturbing activity stop-work order shall be issued immediately by the city for any of the following violations or conditions:
  - 1. Commencing any land disturbing activity requiring a land-disturbing activity permit without first obtaining a permit; or
  - 2. Commencing any land disturbing activity requiring a land-disturbing activity permit without first conducting a pre-construction meeting with the City pursuant to section 74-43(e); or
  - 3. If the violation presents an imminent threat to public health or waters of the state; or
  - 4. If significant amounts of sediment, as determined by the city have been or are being discharged into state waters; or
  - 5. Commencing any land disturbing activity in either the State or City riparian buffer that requires a buffer variance without first obtaining the required variance; or
  - 6. Best management practices have not been properly designed, installed, and maintained.

(1) Best management practices shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the ~~director~~ commissioner or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a state general permit for the discharge of stormwater issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in the Official Code of Georgia Section 12-7-6(b).

(2) A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing activity permit issued by the city or of any state general permit issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

(3) Failure to properly design, install, or maintain best management practices shall constitute a violation of any land disturbing activity permit issued by the city or any state general permit issued by the division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.

(4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur. Compliance with any state requirements are additional requirements of any LDA permit issued by the City pursuant to this Article.

(c) The City adopts by reference the rules and regulations, ordinances, and resolutions adopted by the board pursuant to the Erosion and Sedimentation Act of 1975, O.C.G.A. § 12-7-1, et seq., as amended, for the purpose of governing land-disturbing activities, which require, as a minimum, best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, or this Article, as well as the following:

(1) Stripping of vegetation, regarding and other development activities shall be conducted in a manner so as to minimize erosion;



structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; provided, however, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the director as provided in this paragraph. The following requirements shall apply to any such buffer:

(a) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction-site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

(b) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

- (i) Stream crossings for water lines; or
- (ii) Stream crossings for sewer lines; and

(16) Trout stream buffer required by O.C.G.A. § 12-7-6: There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:

(a) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction-site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: Provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;

(a) Administrative remedy. In the event of any suspension, revocation or modification of any LDA permit, the permit holder shall receive written notice of such action and shall be given the opportunity to show cause why such suspension, revocation or modification should be withdrawn by the city. The city acting by and through its commissioner of ~~public works~~ watershed management shall review the LDA permit application, the reasons submitted by the permit holder for determining such permit holder not be in violation, and shall issue a decision in writing, if such decision to suspend, revoke or modify the LDA permit is affirmed, setting forth the reasons for doing so.

(b) Judicial review. Any person aggrieved by such decision, after exhausting his or her administrative remedies, shall have the right to appeal to the Superior Court of the county wherein which such land disturbing occurred or is proposed to occur, for review of such written decision.

(c) The review process for new LDA permits, as well as that for suspension, modification, and revocation of LDA permits described in this section, will be conducted by the city, unless the district has not reached an agreement with the city which would authorize the city to conduct such review and approval of the plan without referring the application and plan to the district. In the absence of such authorization, review will be conducted by the district.

#### **Sec. 74-46. Education and Certification.**

After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, established pursuant to O.C.G.A. 12-7-19, dependent on their level of involvement with the process, as developed by the Commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.

#### **Sec. 74-47. LDA Permit Fees.**

In addition to any fee levied in this Code of Ordinances, there is assessed a fee of \$40 per disturbed acre payable to the City of Atlanta upon application to perform land disturbing activities. This fee is adopted as required by the State of Georgia pursuant to paragraph (5) subsection (a) or O.C.G.A. 12-5-23, and the Rules and Regulations for Water Quality Control of the Georgia Department of Natural Resources. This fee shall be collected as a separate and distinct charge for the purposes of administering the implementation of the State General Permit, which has been delegated to the City as a local issuing authority pursuant to O.C.G.A. 12-7-1 et. seq.”

**SECTION 4:** That all Ordinances and parts of Ordinances in conflict herewith are hereby repealed.